

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.06.2022

Coram:

THE HONOURABLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
and
THE HONOURABLE MRS.JUSTICE N.MALA

W.P. (MD).No.15739 of 2021 and W.P.No.16287 of 2021
and
W.M.P. (MD).Nos.12688 and 12689 of 2021
and
W.M.P.Nos.14511 of 2022 and 17238 and 17241 of 2021

Chellappa Iyer

..Petitioner in W.P. (MD).No.15739 of 2021

All India Adi Saiva Sivacharyargal Seva Sangam,
Rep. by its General Secretary
B.S.R.Muthukumar,
No.41/19, South Usman Road,
T.Nagar, Chennai-600 017.

..Petitioner in W.P.No.16287 of 2021

Vs.

1. The State of Tamil Nadu,
Rep. by the Secretary to Government,
Hindu Religious and Charitable Endowments Department,
"Namakkal Kavignar Maaligai",
Fort St.George, Chennai-600 009.
 2. The Commissioner,
Hindu Religious and Charitable Endowments,
119, Uthamar Gandhi Salai,
Nungambakkam, Chennai-600 034.
 3. The Executive Officer/Joint Commissioner,
Arulmigu Sree Subramaniya Swamy Temple,
Thiruchendur,
Thoothukkudi District.
.. Respondents in W.P. (MD).No.15739 of 2021
1. State of Tamil Nadu,
Rep. by Secretary to Government,
"Namakkal Kavignar Maaligai",
Fort St.George, Chennai-600 009.

2. The Commissioner,
Hindu Religious and Charitable Endowments,
119, Uthamar Gandhi Salai,
Nungambakkam, Chennai-600 034.
3. Arulmighu Kolanjiappar Thirukovil,
Rep. by Fit Person and Assistant Commissioner,
Manavaalanallur,
Vridhachalam Taluk,
Cuddalore District.

..Respondents in W.P.No.16287 of 2021

Writ Petition (MD).No.15739 of 2021 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records pertaining to order passed by the third respondent, vide his proceedings in Na.Ka.No.4361/2020/A2, dated 07.07.2021 and quash the same as illegal, incompetent and ultra-vires.

Writ Petition No.16287 of 2021 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the respondents pertaining to the Advertisements dated 06.07.2021 and quash the same and consequently direct the respondent to strictly adhere to the Agamas while appointing Archakas as held by the Hon'ble Supreme Court in the decision in Adi Saiva Sivachariyargal Nala Sangam Vs. State of Tamil Nadu and another, reported in AIR 2016 Supreme Court 209.

For petitioner in W.P.(MD).No.15739 of 2021

: Mr.R.Singaravelan, Senior Counsel
for M/s.D.Selvanayagam

For petitioner in W.P.No.16287 of 2021

: Mr.P.Valliappan for
M/s.P.V.Law Associates

For respondents in W.P.(MD).No.15739 of 2021

For R1-R2 : Mr.R.Shanmugasundaram,
Advocate General,
assisted by
Mr.N.R.R.Arun Natarajan, Spl.G.P.
and Ms.A.G.Shakeena

Mr.S.Manuraj
for the proposed intervenor

For respondents in W.P.No.16287 of 2021

: Mr.R.Shanmugasundaram,
Advocate General,
assisted by
Mr.N.R.R.Arun Natarajan,Spl.G.P.
& Ms.A.G.Shakeena for RR-1 & 2

COMMON ORDER

(Common Order of the Court was made by The Honourable The Chief Justice)

A batch of Writ Petitions has been filed to challenge the action of the respondents in regard to the appointment of Archakas in different Temples.

2. The moot question raised by the petitioners is about the competence for appointment of the Archakas.

3. According to the petitioners, Archakas can be appointed only by the Trustees and for that, reference to Sections 28 and 55 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, has been given, along with Rule 12 of the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964. It is submitted that as per Section 55 of the Act, the office-holders and servants of the religious institutions can be filled up by the Trustees and Explanation appended to Section 55 of the Act of 1959 clarifies that expression "office holders or servants" shall include Archakas and Pujaries.

4. In view of the aforesaid, Hindu Religious and Charitable Endowments (for short, H..R. & C.E) Department and for that, any Officer of the Department, would not be competent to call for the application for appointment of the Archakas, rather, it can be by the Trustees.

5. It is further submitted by the petitioners that the issue otherwise has already been dealt with by the Apex Court in the case of Seshammal Vs. State of Tamil Nadu, reported in 1972 (2) SCC 11. The judgment in the case supra, was given after referring to the amendment in certain provisions of the Act of 1959, which includes the amendment in Section 55. The Apex Court dealt with the issue in detail about the qualification of the Archakas and who can be appointed as Archaka. The State Government is not following the judgment aforesaid, and therefore, the petitioners were left with no option but to approach this Court.

6. The prayer of the petitioners is to direct the H.R. & C.E. Department not to act in violation of Sections 28 and 55 of the Act of 1959 and Rule 12 of the Rules of 1964. According to them, the appointment of the Archakas may be left to the discretion of the Trustees of the Temples. If the direction aforesaid is given, then the petitioners would be at liberty to challenge the individual appointment by the Trustees, if it is not made in accordance to the judgment of the Apex Court in the case of Seshammal (supra). To illustrate it, it is submitted that if the Temple is governed by Agamas, who can be an Archaka has been described by the Apex Court and accordingly, the person qualified for it alone can be appointed.

7. The issue in regard to the aforesaid may be left open for the individual to challenge it, if qualified persons are not appointed as Archakas by the Trustees.

8. The learned Advocate General submitted that the State Government is not going against the judgment of the Apex Court in the Seshammal (supra), rather, they are bound by it. The appointment of the Archakas would be made by the Trustees, in view of Sections 28 and 55 of the Act of 1959, accompanied by Rule 12 of the Rules of 1964. However, there are many Temples where the Trustees are not there thus a Fit Person has been appointed as per Section 49 of the Act of 1959. In those Temples, the appointment of the Archakas would be made by the Fit Person. The aforesaid is to be clarified, because, the Fit Person discharges the duties of the Trustees till the Trustees are nominated or appointed. How the appointment of the Archakas have to be made has been clarified by the Apex Court in the case of Seshammal (supra) and therefore, the judgment aforesaid may be applied for it.

9. So far as the challenge to the individual case of appointment of Archakas is concerned, the Apex Court had applied the earlier judgment of Seshammal (supra), in the case of Adi Saiva Sivachariyargal Nala Sangam Vs. State of T.N., reported in 2016 (2) SCC 725, therein the ratio propounded by the Apex Court in the case of Seshammal (supra), has been reiterated, with further direction that if individual is aggrieved by the appointment of Archakas, they can challenge it separately.

10. We have considered the submissions made by both parties and find that there is no difference on the legal issue, rather, both parties have agreed that the Archakas can be appointed by the Trustees, in view of Sections 28 and 55 of the Act of 1959 and Rule 12 of the Rules of 1964.

11. The only issue which needs a clarification is about those Temples where presently the Trustees have not been

nominated or appointed. There, the Temple is looked after by the Fit Person appointed under Section 49 of the Act of 1959. In those Temples, exercise for appointment of Archakas would obviously be taken by the Fit Person.

12. The aforesaid is clarified so as to show the authority of the Trustees to appoint the Archakas and in the absence of them, the authority would be of the Fit Person. The manner and qualification of Archakas would depend on the nature of the Temples. If it is as per Agamas then eligibility of Archakas would be as given by the Apex Court in the judgment (supra).

13. It is therefore left open for the individual to challenge the appointment of Archakas, if they find that they were not eligible in consonance with the judgment given by the Apex Court in the case of Seshammal (supra) and Adi Saiva Sivachariyargal Nala Sangam (supra), wherein it has been held as under:

In the case of SESHAMMAL (supra):

"19. We have found no any difficulty in agreeing with the learned Advocate-General that Section 28 (1) of the principal Act which directs the trustee to administer the affairs of the temple in accordance with the terms of the trust or the usage of the institution, would control the appointment of the Archaka to be made by him under the amended Section 55 of the Act. In a Saivite or a Vaishnavite temple the appointment of the Archaka will have to be made from a specified denomination, sect or group in accordance with the directions of the Agamas governing those temples. Failure to do so would not only be contrary to Section 28(1) which requires the trustee to follow the usage of the temple, but would also interfere with a religious practice the inevitable result of which would be to defile the image. The question, however, remains whether the trustee, while making appointment from the specified denomination, sect or group in accordance with the Agamas, will be bound to follow the hereditary principle as a usage peculiar to the temple. The learned Advocate-General contends that there is no such invariable usage. It may be that, as a matter of convenience, an Archaka's son being readily available to perform the worship may have been selected for appointment as an Archaka from times immemorial. But that, in his submission, was not a usage. The principle of next-in-line of succession has failed when the

successor was a female or had refused to accept the appointment or was under some disability. In all such cases the Archaka was appointed from the particular denomination, sect or group and the worship was carried on with the help of such a substitute. It, however, appears to us that it is now too late in the day to contend that the hereditary principle in appointment was not a usage. For whatever reasons, whether of convenience or otherwise, this hereditary principle might have been adopted, there can be no doubt that the principle had been accepted from antiquity and had also been fully recognised in the unamended Section 55 of the principal Act. Sub-section (2) of Section 55 provided that where the office or service is hereditary, the person next in the line of succession shall be entitled to succeed and only a limited right was given under sub-section (3) to the trustee to appoint a substitute. Even in such cases the explanation to sub-section (3) provided that in making the appointment of the substitute the trustee should have due regard to the claims of the members of the family, if any, entitled to the succession. Therefore, it cannot be denied as a fact that there are several temples in Tamil Nadu where the appointment of an Archaka is governed by the usage of hereditary succession. The real question, therefore, is whether such a usage should be regarded either as a secular usage or a religious usage. If it is a secular usage, it is obvious, legislation would be permissible under Article 25(1)(a) and if it is a religious usage it would be permissible if it falls squarely under sub-section 25(1)(b).

...

21. It is true that a priest or an Archaka when appointed has to perform some religious functions but the question is whether the appointment of a priest is by itself a secular function or a religious practice. Mr. Palkhivala gave the illustration of the spiritual head of a math belonging to a denomination of a Hindu sect like the Shankaracharya and expressed horror at the idea that such a spiritual head could be chosen by a method recommended by the State though in conflict with the usage and the traditions of the particular institution. Where, for example, a successor of a Mathadhipati is chosen by the Mathadhipati by giving him mantra-deeksha or where the Mathadhipati

is chosen by his immediate disciples, it would be, he contended, extraordinary for the State to interfere and direct that some other mode of appointment should be followed on the ground of social reform. Indeed this may strike one as an intrusion in the matter of religion. But we are afraid such an illustration is inapt when we are considering the appointment of an Archaka of a temple. The Archaka has never been regarded as a spiritual head of any institution. He may be an accomplished person, well versed in the Agamas and rituals necessary to be performed in a temple but he does not have the status of a spiritual head. Then again the assumption made that the Archaka may be chosen in a variety of ways is not correct. The Dharam-karta or the Shebait makes the appointment and the Archaka is a servant of the temple. It has been held in *K. Seshadri Aiyangar v. Ranga Bhattar* [ILR 35 Mad 631] that even the position of the hereditary Archaka of a temple is that of a servant subject to the disciplinary power of the trustee. The trustee can enquire into the conduct of such a servant and dismiss him for misconduct. As a servant he is subject to the discipline and control of the trustee as recognised by the unamended Section 56 of the principal Act which provides "all office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite therefrom shall, whether the office or service is hereditary or not, be controlled by the trustee and the trustee may, after following the prescribed procedure, if any, fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause". That being the position of an Archaka, the act of his appointment by the trustee is essentially secular. He owes his appointment to a secular authority. Any lay founder of a temple may appoint the Archaka. The Shebait and Managers of temples exercise essentially a secular function in choosing and appointing the Archaka. That the son of an Archaka or the son's son has been continued in the office from generation to generation does not make any difference to the principle of appointment and no such hereditary Archaka can claim any right to the office. See *Kali Krishan Ray v. Makhan Lal Mookerjee* [ILR 50 Cal 233], *Nanabhai Narotamdas v. Trimbak Balwant Bhandare* [(1878-80) Vol. 4, Unreported printed

Judgments of the Bombay High Court, p. 169] and Maharanee Indurjeet Kooer v. Chundemun Misser [16 WR 99] . Thus the appointment of an Archaka is a secular act and the fact that in some temples the hereditary principle was followed in making the appointment would not make the successive appointments anything but secular. It would only mean that in making the appointment the trustee is limited in respect of the sources of recruitment. Instead of casting his net wide for selecting a proper candidate, he appoints the next heir of the last holder of the office. That after his appointment the Archaka performs worship is no ground for holding that the appointment is either a religious practice or a matter of religion.

22. In view of sub-section (2) of Section 55, as it now stands amended, the choice of the trustee in the matter of appointment of an Archaka is no longer limited by the operation of the rule of next-in-line of succession in temples where the usage was to appoint the Archaka on the hereditary principle. The trustee is not bound to make the appointment on the sole ground that the candidate, is the next-in-line of succession to the last holder of office. To that extent, and to that extent alone, the trustee is released from the obligation imposed on him by Section 28 of the principal Act to administer the affairs in accordance with that part of the usage of a temple which enjoined hereditary appointments. The legislation in this respect, as we have shown, does not interfere with any religious practice or matter of religion and, therefore, is not invalid.

23. We shall now take separately the several amendments which were challenged as invalid. Section 2 of the Amendment Act amended Section 55 of the principal Act and the important change which was impugned on behalf of the petitioners related to the abolition of the hereditary principle in the appointment of the Archaka. We have shown for reasons already mentioned that the change effected by the Amendment is not invalid. The other changes effected in the other provisions of the principal Act appear to us to be merely consequential. Since the hereditary principle was done away with the words "whether the office or service is hereditary or not" found in Section 56 of the principal Act have been omitted by Section 3 of the Amendment Act. By Section 4 of the latter Act clause (xxiii)

of sub-section (2) in Section 116 is suitably amended with a view to deleting the reference to the qualifications of hereditary and non-hereditary offices which was there in clause (xxiii) of the principal Act. The change is only consequential on the amendment of Section 55 of the principal Act. Sections 5 and 6 of the Amendment Act are also consequential on the amendment of Sections 55 and 56. These are all the sections in the Amendment Act and in our view the Amendment Act as a whole must be regarded as valid.

24. It was, however, submitted before us that the State had taken power under Section 116(2), clause (xxiii) to prescribe qualifications to be possessed by the Archakas and, in view of the avowed object of the State Government to create a class of Archakas irrespective of caste, creed or race, it would be open to the Government to prescribe qualifications for the office of an Archaka which were in conflict with Agamas. Under Rule 12 of the Madras Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 proper provision has been made for qualifications of the Archakas and the petitioners have no objection to that rule. The rule still continues to be in force. But the petitioners apprehend that it is open to the Government to substitute any other rule for Rule 12 and prescribe qualifications which were in conflict with Agamic injunctions. For example at present the Ulthurai servant whose duty it is to perform pujas and recite vedic mantras etc, has to obtain the fitness certificate for his office from the head of institutions which impart instructions in Agamas and ritualistic matters. The Government, however, it is submitted, may hereafter change its mind and prescribe qualifications which take no note of Agamas and Agamic rituals and direct that the Archaka candidate should produce a fitness certificate from an institution which does not specialise in teaching Agamas and rituals. It is submitted that the Act does not provide guidelines to the Government in the matter of prescribing qualifications with regard to the fitness of an Archaka for performing the rituals and ceremonies in these temples and it will be open to the Government to prescribe a simple standardised curriculum for pujas in the several temples ignoring the traditional pujas and rituals followed in those temples. In our opinion the apprehensions

of the petitioners are unfounded. Rule 12 referred to above still holds the field and there is no good reason to think that the State Government wants to revolutionise temple worship by introducing methods of worship not current in the several temples. The rule-making power conferred on the Government by Section 116 is only intended with a view to carry out the purposes of the Act which are essentially secular. The Act nowhere gives the indication that one of the purposes of the Act is to effect a change in the rituals and ceremonies followed in the temples. On the other hand, Section 107 of the principal Act emphasises that nothing contained in the Act would be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Article 26 of the Constitution. Similarly, Section 105 provides that nothing contained in the Act shall (a) save as otherwise expressly provided in the Act or the rules made thereunder, affect any honour, emolument or perquisite to which any person is entitled by custom or otherwise in any religious institution, or its established usage in regard to any other matter. Moreover, if any rule is framed by the Government which purports to interfere with the rituals and ceremonies of the temples the same will be liable to be challenged by those who are interested in the temple worship. In our opinion, therefore, the apprehensions now expressed by the petitioners are groundless and premature."

In *Adi Saiva Sivachariyargal Nala Sangam* (supra):

"48. *Seshammal v. State of T.N.*, (1972) 2 SCC 11 is not an authority for any proposition as to what an Agama or a set of Agamas governing a particular or group of temples lay down with regard to the question that confronts the court, namely, whether any particular denomination of worshippers or believers have an exclusive right to be appointed as Archakas to perform the poojas. Much less, has the judgment taken note of the particular class or caste to which the Archakas of a temple must belong as prescribed by the Agamas. All that it does and says is that some of the Agamas do incorporate a fundamental religious belief of the necessity of performance of the poojas by Archakas belonging to a particular and distinct sect/group/denomination, failing which, there will be defilement of deity requiring purification ceremonies. Surely, if the

Agamas in question do not proscribe any group of citizens from being appointed as Archakas on the basis of caste or class the sanctity of Article 17 or any other provision of Part III of the Constitution or even the Protection of Civil Rights Act, 1955 will not be violated. What has been said in Seshammal (supra) is that if any prescription with regard to appointment of Archakas is made by the Agamas, Section 28 of the Tamil Nadu Act mandates the trustee to conduct the temple affairs in accordance with such custom or usage. The requirement of constitutional conformity is inbuilt and if a custom or usage is outside the protective umbrella afforded and envisaged by Articles 25 and 26, the law would certainly take its own course. The constitutional legitimacy, naturally, must supersede all religious beliefs or practices.

49. The difficulty lies not in understanding or restating the constitutional values. There is not an iota of doubt on what they are. But to determine whether a claim of State action in furtherance thereof overrides the constitutional guarantees under Articles 25 and 26 may often involve what has already been referred to as a delicate and unenviable task of identifying essential religious beliefs and practices, sans which the religion itself does not survive. It is in the performance of this task that the absence of any exclusive ecclesiastical jurisdiction of this Court, if not other shortcomings and inadequacies, that can be felt. Moreover, there is some amount of uncertainty with regard to the prescription contained in the Agamas. Coupled with the above is the lack of easy availability of established works and the declining numbers of acknowledged and undisputed scholars on the subject. In such a situation one is reminded of the observations, if not the caution note struck by Mukherjea, J. in Shirur Mutt [Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282 : 1954 SCR 1005] with regard to complete autonomy of a denomination to decide as to what constitutes an essential religious practice, a view that has also been subsequently echoed by this Court though as a "minority view". But we must hasten to clarify that no such view of the Court can be understood to be an indication of any bar to judicial determination of the issue as and when it arises. Any contrary opinion would give rise to large-scale conflicts of

claims and usages as to what is an essential religious practice with no acceptable or adequate forum for resolution. That apart the "complete autonomy" contemplated in Shirur Mutt [Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282 : 1954 SCR 1005] and the meaning of "outside authority" must not be torn out of the context in which the views, already extracted, came to be recorded (p. 1028). The exclusion of all "outside authorities" from deciding what is an essential religious practice must be viewed in the context of the limited role of the State in matters relating to religious freedom as envisaged by Articles 25 and 26 itself and not of the courts as the arbiter of constitutional rights and principles.

50. What then is the eventual result? The answer defies a straightforward resolution and it is the considered view of the Court that the validity or otherwise of the impugned G.O. would depend on the facts of each case of appointment. What is found and held to be prescribed by one particular or a set of Agamas for a solitary or a group of temples, as may be, would be determinative of the issue. In this regard it will be necessary to re-emphasise what has been already stated with regard to the purport and effect of Article 16(5) of the Constitution, namely, that the exclusion of some and inclusion of a particular segment or denomination for appointment as Archakas would not violate Article 14 so long as such inclusion/exclusion is not based on the criteria of caste, birth or any other constitutionally unacceptable parameter. So long as the prescription (s) under a particular Agama or Agamas is not contrary to any constitutional mandate as discussed above, the impugned G.O. dated 23-5-2006 by its blanket fiat to the effect that, "Any person who is a Hindu and possessing the requisite qualification and training can be appointed as a Archaka in Hindu temples" has the potential of falling foul of the dictum laid down in Seshammal [Seshammal v. State of T.N., (1972) 2 SCC 11] . A determination of the contours of a claimed custom or usage would be imperative and it is in that light that the validity of the impugned G.O. dated 23-5-2006 will have to be decided in each case of appointment of Archakas whenever and wherever the issue is raised. The necessity of seeking specific judicial verdicts

in the future is inevitable and unavoidable; the contours of the present case and the issues arising being what has been discussed."

[emphasis supplied]

14. Keeping open the right of the individual candidate to challenge the individual appointment of the Archakas, we have given appropriate direction to govern appointment of Archakas as the Judgment of Apex Court in the case of Seshammal (supra) and also Adi Saiva Sivachriyargal Nala Sangam (supra) and conclude these petitions on the agreement of the parties.

15. Accordingly, the respondents shall follow the above two judgments for appointment of the Archakas, in particular, their qualification and eligibility, as has been observed by the Apex Court.

16. If any appointment is made offending the provisions of law, or the directions of the Apex Court, individual appointment can be challenged in the manner known to law.

17. With the above observations and directions, these Writ Petitions are disposed of. There shall be no order as to costs. Consequently, the Miscellaneous Petitions are closed.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Secretary to Government,
The State of Tamil Nadu,
Hindu Religious and Charitable Endowments Department,
"Namakkal Kavignar Maaligai",
Fort St.George, Chennai-600 009.
2. The Commissioner,
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119, Uthamar Gandhi Salai,
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State of Tamil Nadu,
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5. The Fit Person and
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Vridhachalam Taluk,
Cuddalore District.

+lcc to Government Pleader SR. No. 41547
+lcc to M/s.A.S.Kailasam & Associates, SR. No. 40864
+lcc to Mr.S.Senthil Nathan, Advocate SR. No. 40062
+lcc to Mr.S.Manuraj, Advocate SR. No. 39996

W.P. (MD) .No.15739 of 2021
and W.P.No.16287 of 2021

NR (CO)
PR (12/07/2022)